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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/765,318	01/26/2004	Keith G. Lurie	016354-005212US	9412	
20350	20350 7590 02/24/2006			EXAMINER	
	D AND TOWNSE	DOSTER GREEN	E, DINNATIA JO		
TWO EMBA	RCADERO CENTE OOR	ART UNIT	PAPER NUMBER		
SAN FRANCISCO, CA 94111-3834			3743		

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)		
Office Action Summary		10/765,318	LURIE, KEITH G.		
		Examiner	Art Unit		
		Dinnatia Doster-Greene	3743		
	The MAILING DATE of this communication app	ears on the cover sheet with the c	orrespondence address		
Period fo		ALC CET TO EXPIRE AMONTHU	C) OR THIRTY (20) DAVC		
WHIC - Exte after - If NC - Failu Any	ORTENED STATUTORY PERIOD FOR REPLY CHEVER IS LONGER, FROM THE MAILING DANSIONS of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication. Operiod for reply is specified above, the maximum statutory period were to reply within the set or extended period for reply will, by statute, reply received by the Office later than three months after the mailing ed patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tim vill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONEI	I. lely filed the mailing date of this communication. O (35 U.S.C. § 133).		
Status					
1)🖂	Responsive to communication(s) filed on <u>05 De</u>	ecember 2005.			
2a) <u></u> ☐	This action is FINAL . 2b)⊠ This	action is non-final.			
3)	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is				
	closed in accordance with the practice under E	x parte Quayle, 1935 C.D. 11, 45	3 O.G. 213.		
Disposit	ion of Claims				
4)⊠	Claim(s) <u>1-6,8-14 and 21-25</u> is/are pending in t	he application.			
• · · ·	4a) Of the above claim(s) is/are withdraw	• •			
5)	Claim(s) is/are allowed.	·			
6)⊠	Claim(s) <u>1-6, 8-14, 21-25</u> is/are rejected.				
•	Claim(s) is/are objected to.				
8)	Claim(s) are subject to restriction and/or	r election requirement.			
Applicat	ion Papers				
9)[The specification is objected to by the Examine	r.			
10)	The drawing(s) filed on is/are: a) acce	epted or b) objected to by the E	Examiner.		
	Applicant may not request that any objection to the	drawing(s) be held in abeyance. See	e 37 CFR 1.85(a).		
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).					
11)	The oath or declaration is objected to by the Ex	aminer. Note the attached Office	Action or form PTO-152.		
Priority (under 35 U.S.C. § 119				
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).					
a) All b) Some * c) None of:					
1. Certified copies of the priority documents have been received.					
2. Certified copies of the priority documents have been received in Application No					
3. Copies of the certified copies of the priority documents have been received in this National Stage					
* 0	application from the International Bureau See the attached detailed Office action for a list	,	٩		
	see the attached detailed Office action for a list	or the certified copies not receive	u.		
Attachmen					
	ce of References Cited (PTO-892) te of Draftsperson's Patent Drawing Review (PTO-948)	4) Interview Summary Paper No(s)/Mail Da			
3) 🔲 Infor	mation Disclosure Statement(s) (PTO-1449 or PTO/SB/08) or No(s)/Mail Date		atent Application (PTO-152)		

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37 CFR 1.105 REQUIREMENT FOR INFORMATION

1. Applicant (or the assignee of this application if the assignee has undertaken the prosecution of the application is required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

- 2. There are numerous other co-pending applications and issued patents, which disclose and claim very similar and/or identical subject matter. In accordance with 37 CFR 1.105 and MPEP 704.11(a) subsection G, applicant (or the assignee) is respectfully requested to disclose all co-pending applications and related patents (please see the non-exhaustive list below of applications and issued patents that the USPTO believes may be related) and identify the specific claims of those applications and/or patents which may present double patenting issues with the instant application claims. This requirement is reasonably necessary to examination because, based on an initial review of the applications, there is a significant degree of overlap in claimed subject matter, thus requiring an analysis of commonality of claimed subject matter to determine patentability under 35 USC 101 double patenting and/or obviousness type double patenting. For example:
- a) Claims 1 and 21 of the *current application*, 10/765,318, differ from Claim 1, and 24 of *copending application*, 10/426161, in only the obvious variation that the current application applies a method and apparatus for the treatment of a modulating a

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person's autonomic function and a method for assisting a person in recovering from physical exertion; while the copending application applies a method and apparatus for the treatment of decreasing intracranial or intraocular pressure via decreasing a person's negative intrathoracic pressure. Regardless, both applications follow the same method of decreasing the patient's negative intrathoracic pressure.

- 4. Because the applicant (or the assignee) is presumably far more cognizant of the contents of the claims in these applications than any Office staff, and has access to the source documents by which such comparison could be done better than within the Office, it is reasonable to require the applicant to provide the information needed to determine the commonality among the claims.
- 5. Should applicant (or the assignee) believe that Double Patenting exists, then applicant (or the assignee) is invited to file Terminal Disclaimers and/or amend the currently pending claims in the interest of expediting the prosecution of the current application. Applicant (or the assignee) should note that a terminal disclaimer is effective to overcome an obvious type double patenting reject, but will not overcome a "same type" double patenting rejection under 35 U.S.C. § 101.
- 6. Non-exhaustive list of possible related co-pending applications and patents:

40/004 000

09/854,238	10/224,263
09/930,315	10/224,263
09/966,945	10/251,080
09/967,029	10/255,319
10/119,203	10/396,007
10/158,528	10/401,493

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10/410,229	5,827,893
10/426,161	5,919,210
10/460,558	5,984,909
10/660,366	6,001,085
10/660,462	6,029,667
10/765,318 Application in Qu	<i>lestion</i> 6,062,219
10/796,875	6,078,834
10/920,678	6,155,257
11/034,996	6,224,562
11/051,345	6,234,985
11/127,055	6,277,107
11/127,993	6,312,399
5,316,907	6,425,393
5,423,772	6,459,933
5,454,779	6,463,327
5,549,581	6,486,206
5,551,420	6,526,973
5,588,422	6,587,726
5,618,665	6,604,523
5,643,231	6,656,166
5,645,522	6,776,156
5,692,498	6,863,656
5,722,963	6,935,336
5,730,122	6,938,618

- 7. This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).
- 8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinnatia Doster-Greene whose telephone number is (571) 272-7143. The examiner can normally be reached on Monday thru Friday.

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9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Henry Bernsett
Supervisory Patent Examiner

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